

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9123 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PRABHUDAS P PRAJAPATI - Petitioner

Versus

DIST. AYURVEDIC OFFICER & 2 - Respondents

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Appearance :

MR PRAKASH K JANI for Petitioner,
NOTICE SERVED for Respondent(s) : 1, 3,
MR KP RAVAL AGP for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 17/02/2006

ORAL JUDGMENT

1.The petitioner has preferred this petition under Article 226 of the Constitution of India challenging the denial of pay fixation in the pay-scale of Rs.1640-

2900 (old) with effect from the date on which similarly situated employees were placed in the said pay-scale vide Resolution dated 30th December, 1994.

2. Brief facts deserves to be set out as under:-

2.1 The petitioner is qualified Ayurvedic Vaid, and he has received the degree of Ayurved - Pravin from the Committee for Shudh Ayurvedic Course, Gujarat State, Ahmedabad on 18th November, 1963. A copy of the certificate dated 18th November, 1963 is annexed at Annexure -A to the memo of petition. The petitioner has been duly registered by the Gujarat Board of Ayurvedic and Unani Systems of Medicine, Ahmedabad on 24th May, 1968. The certificate to that effect is annexed at Annexure - B to the memo of petition. Thus, the petitioner was entitled to practice in Gujarat under the Gujarat Medical Practitioners' Act 1963.

2.2 The Director of Ayurved published an advertisement on 14th January, 1972 inviting applications for appointing the Subsidized Medical Practitioner in Ayurvedic S.M.P. Centres on fixed pay of Rs.200/- p.m. A copy of the said advertisement

dated 14th January, 1972 is annexed at Annexure - C to the memo of petition. The petitioner applied for the post. He was selected for appointment as Ayurvedic S.M.P. The Director of Ayurved issued office order dated 14th March, 1972 appointing the petitioner and 6 others as Ayurvedic S.M.P. at the places shown against their names. The appointment order dated 14th March, 1972 at Annexure - D contains the name of the petitioner at Sr. No. 3.

2.3 The petitioner was asked to report at S.M.P. Centre at village Sidhpur, Taluka : Kheralu, District : Mehsana and accordingly, the petitioner reported for duty with effect from 21st March, 1972. A copy of joining report of the petitioner is produced at Annexure - E to the memo of petition. The petitioner was being paid the fixed emoluments of Rs.200/- per month.

2.4 The respondent State Government passed a Resolution on 30th December, 1994 regularizing the services of the Ayurvedic Medical Officers drawing fixed pay of Rs.150/- as a special case and placed them in the Panchayat service in the pay-scale of Rs.1640-2900 after exempting them from recruitment procedure

and relaxing the criteria of upper age limit. The Government Resolution dated 30th December, 1994 containing 16 names of above said such Ayurvedic Medical Officers is annexed by the petitioner at Annexure - F to the memo of petition. The petitioner, an appointee of 1972, was not included in the said list, whereas, the Ayurvedic Medical Officer drawing fixed pay of Rs.150/- and who came to be appointed in the year 1977 and upto 1980, were included in the said list and were granted the benefit of regularization in the Panchayat Services with appropriate pay scale of Rs.1640-2900. The petitioner, thus was not accorded the benefit of regularization of his services and pay-scale of Rs.1640-2900 and the persons juniors to the petitioner having same qualification, were granted this benefits vide Resolution dated 30th December, 1994.

2.5 The petitioner has submitted that though the petitioner was appointed way back on March 14, 1972, he was not accorded the benefit of regularization of service as Ayurvedic Medical Officer, Class-III nor was he accorded the pay-scale of Rs.1640-2900, as it was accorded in case of other similarly situated persons like the present petitioner and who were infact, juniors to the petitioners, as they came to be

appointed in the year 1977 and thereafter. The denial of benefit of regularization with appropriate pay-scale of Rs.1640-2900 to the petitioner with effect from the date on which the other similarly qualified juniors were granted Ayurvedic Medical practitioner under the Resolution dated 30th December, 1994, was discriminatory, arbitrary and therefore, the same was violative of Articles 14 and 16 of the Constitution of India.

2.6 The petitioner addressed representation to the respondents on various dates but without any avail. The petitioner was constrained to address a letter dated 4.9.1995 to the respondent informing them that his salary be fixed and disbursed from the current month in the pay-scale of Rs.1640-2900 as he was wrongfully denied the benefits of the same pay-scale, whereas, his juniors were given the benefits vide Resolution dated 30th December, 1994.

2.7 The concerned authority addressed a letter to the petitioner on 6.9.1996, which is annexed at Annexure - J to the petition, informing that as the petitioner was not included in the list of persons who were selected as Class-III Ayurvedic Medical Practitioner, he cannot draw his salary in the pay-

scale of Rs.1640-2900. The petitioner, thus, was denied the benefit of regularization as Medical Practitioner Class-III and the appropriate pay-scale of Rs.1640-2900 from the date when other similarly situated persons were given benefits vide resolution dated 30th December, 1994.

2.8 Being aggrieved and dissatisfied with the discriminatory treatment meted out to the petitioner, the petitioner preferred present petition under Article 226 of the Constitution of India seeking issuance of writ of mandamus against the respondents for according him the benefit of regularization and the pay-scale of Rs.1640-2900 from the date his other juniors received the same under Resolution dated 30th December, 1994.

3. During the pendency of this petition, the respondent passed a Resolution dated 4th July, 2001 regularizing the service of the petitioner along with five others as Ayurvedic Medical practitioner with effect from the date they resumed their duties at the respective places shown under the same Resolution and placed them in the pay-scale of Rs.1640-2900 (pre-revised).

4. The petitioner preferred Civil Application No. 8565 of 2001 in Special Civil Application No. 9123 of 1995 inter alia praying that the benefit of revised pay-scale

and regularization accorded to him vide Resolution dated 4th July, 2001 should be ordered to be treated to have been accorded to him with effect the date on which other similarly situated persons were accorded the same benefit under Resolution dated 30th December, 1994. This Civil Application No. 8565 of 2001, however, came to be disposed of by this Court (Coram: A.R. Dave, J.) vide order dated 20th February, 2002 observing that granting of the Civil Application would amount to allowing the main petition at the interim stage and therefore, the main matter was ordered to be fixed for early hearing.

5. Shri P.K. Jani, learned advocate appearing for the petitioner has submitted that denial of benefit of regularization and denial of the pay-scale of Rs.1640-2900 to the petitioner right from the date on which his juniors were granted the same under Resolution dated 30th December, 1994, is violative of Articles 14 and 16 of the Constitution of India. Shri Jani has submitted that the petitioner was qualified and eligible for receiving the benefit of regularization of service and the pay-scale of Rs.1640-2900 along with other similarly situated persons right from the date on which his juniors received under Resolution dated 30th December, 1994. The respondents had not shown any

reason for leaving out the petitioner from the benefit of regularization of service and the pay-scale of Rs.1640-2900. The respondents had infact, no reason for not according the benefits to the petitioner when his juniors came to be given the said benefit vide Resolution dated 30th December, 1994.

6. Shri K.P.Raval, learned AGP appears for State and other respondents. Shri Raval submitted that it was not the petitioner alone, who was left out under Resolution dated 30th December, 1994 as it is seen from the record of the petition. Shri Raval has submitted that the petitioner has been infact, granted the benefits of regularization as Ayurvedic Medical practitioner and has been accorded the appropriate pay-scale of Rs.1640-2900 vide Resolution dated 4th July, 2001. It is clearly stipulated therein in that, the date of regularization in service will be the date on which employee resumes his duty at the respective places shown in the Resolution. Having accepted this Resolution, it is not open to the petitioner to say that the said benefit ought to have been granted to him from 30th December, 1994. Shri Raval could not show any reason as to why the respondents did not accord the benefit of regularization and pay-scale of Rs.1640-2900 to the

petitioner when persons junior to him were accorded the same vide Resolution dated 30th December, 1994. In absence of any reply answering the contentions of the petitioner, Shri Raval could not stretch his submission any further.

7. This court has perused the documents placed on record by the petitioner and heard the learned counsel of the respective parties at length. The question arises as to whether the respondents were justified in not according the benefit of regularization of services and the pay-scale of Rs.1640-2900 to the petitioner when persons juniors to the petitioner were accorded the same vide Resolution dated 30th December, 1994. It is not the case of the respondent that the petitioner was not qualified or eligible for receiving the benefit of regularization of service and granting of pay-scale of Rs.1640-2900 with effect from the date his juniors received the same under Resolution dated 30th December, 1994. The petitioner's several representations were ignored by the respondents. The denial of the benefit of regularization of his service as Medical Practitioner and granting him the resultant benefit of appropriate pay-scale of Rs.1640-2900 (pre-revised) with effect from the date his other juniors were granted the same

under Resolution dated 30th December, 1994, is discriminatory and therefore, the same is violative of Articles 14 and 16 of the Constitution of India. The respondents have failed in pointing out any earthly reason for not granting the said benefit to the petitioner when persons identically situated were granted the same benefit under Resolution dated 30th December, 1994. The benefit, which is granted to the petitioner under Resolution dated 4th July, 2001 ought to have been granted to the petitioner way back in the year 1994 when the respondents granted similar benefits and pay-scale to the petitioner's junior vide Resolution dated 30th December, 1994. In absence of any reply answering the contention of the petitioner and any cogent reasons, this court is left with no choice but to hold that the petitioner was entitled to receive the benefit of regularization of his service as Ayurvedic Medical Practitioner with the then existing pay-scale of Rs.1640-2900 from the date when his juniors received the same under Resolution dated 30th December, 1994.

8. In view of this, this petition deserves to be allowed. The petitioner has successfully made out a case for issuance of writ of mandamus to the respondents

directing them to accord the benefit of regularization of his services as Ayurvedic Medical Practitioner in appropriate pay-scale of Rs.1640-2900 with effect from the date on which his juniors were given the same vide Resolution dated 30th December, 1994.

9. Accordingly, the petition is allowed. The respondents are directed to accord to the petitioner the benefit of the regularization of his service as Medical Practitioner in the then existing pay-scale of Rs.1640-2900 with effect from the date his juniors were accorded the same benefit under Resolution dated 30th December, 1994 and to pay him the difference in salary and other monetary benefits within a period of 15 days from the receipt of the certified copy of this order, failing which, the amount payable to the petitioner shall incur interest at the rate of 10% p.a. Rule is made absolute in above terms with no order as to costs.

(S.R.BRAHMBHATT, J.)

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